IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
:
vs. : **No. CR-1821-2017**
:
HOUSTON ROBERT HALL, : **Motion for Reconsideration**
Defendant : **of Sentence**

OPINION AND ORDER

On July 30, 2018, Defendant pled guilty to count 1, terroristic threats, a misdemeanor of the first degree, Counts 3 and 4, simple assault by physical menace, misdemeanors of the second degree, Counts 5 and 6, harassment, misdemeanors of the third degree and Count 7, criminal mischief, a misdemeanor of the third degree. Defendant was in a confrontation with Jazmyn and Breanna Walburn on October 22, 2017. The two victims were seated in a Honda sedan with Defendant's and Jazmyn's one-year old infant. While Defendant punctured the front tires of the Honda with a knife and displayed an aggressive physical demeanor, he screamed at the victims and threatened that a "9 mm" would come next.

On October 1, 2018, the court sentenced the defendant on Count 1, terroristic threats, to a term of state incarceration, the minimum of which was one (1) year and the maximum of which was two and a half (2 ½) years. With respect to Count 3 (incorrectly referenced as Count 2), simple assault by physical menace, the court sentenced the defendant to a consecutive period of state incarceration, the minimum of which was one (1) year and the maximum of which was two and a half (2 ½) years. The sentence of the court with respect to Count 4 (incorrectly referenced as Count 3), simple assault by physical menace

was a concurrent sentence of one (1) to two and a half (2 ½) years. Counts 5 and 6 merged with Counts 3 and 4 for sentencing purposes and with respect to Count 7, the defendant was ordered to pay a fine and restitution. The aggregate term of incarceration was a minimum of two (2) years and a maximum of five (5) years.

On October 10, 2018, Defendant filed a motion to reconsider his sentence. Argument was held before the court on November 5, 2018. This Opinion and Order shall address Defendant's motion for sentence reconsideration.

Defendant first argued that the court imposed a "de facto" deadly weapons used enhancement. Candidly, Defendant's argument is without any basis in fact or law whatsoever. Defendant cannot point to any factual or legal support.

The offense gravity score for terroristic threats and simple assault was a three, and Defendant's prior record score was a two. Therefore, the standard guideline range was RS-9, the deadly weapon possessed guideline range was 3-12, and the deadly weapon used guideline range was 6-15.

In the court's September 5, 2018 Order, it concluded after hearing argument that the deadly weapon enhancement for a weapon used would apply. However, by Order dated October 1, 2018, after taking testimony and discussing the matter further with the parties, the court concluded that pursuant to the plea agreement, it would use the deadly weapon possessed enhancement resulting in a standard range of three (3) to twelve (12) months on Counts 1, 3 and 4. It was specifically noted in the Order that "the court will be utilizing a deadly weapon possessed enhancement and not a deadly weapon used

enhancement."

The standard range for a deadly weapon possessed enhancement was three (3) to twelve (12) months for the terroristic threats and the simple assault convictions. The court sentenced the defendant to the upper end of the standard range. This clearly was not a de facto utilization of the deadly weapon used enhancement. Defendant also argues that the court abused its discretion by imposing consecutive sentences "based upon the nature of the interaction with the victims", improperly relying upon the negligent actions of the defense which required the appearance of the victims at more than one proceeding, considering improper factors, and imposing a manifestly excessive sentence.

Initially, because the court obtained and reviewed a Pre-Sentence Investigation report, it is presumed that the court was aware of all the appropriate sentencing factors and considerations. ***Commonwealth v. Ventura,*** 975 A.2d 1128, 1135 (Pa. Super. 2009). It is presumed that the court properly considered and weighed all relevant factors and the court's discretion should not be disturbed. ***Id***.

"A sentencing judge has broad discretion in determining a reasonable penalty… as it is the sentencing court that is in the best position to 'view the defendant's character, displays of remorse, defiance, or indifference and the overall effect and nature of the crime.'" ***Commonwealth v. Edwards,*** 2018 PA Super 230, 2018 WL 3910695, *8 (August 16, 2018), quoting ***Commonwealth v. Walls,*** 926 A.2d 957, 961 (Pa. 2007). "Sentencing is a matter vested in the sound discretion of the sentencing judge and a sentence will not be disturbed absent a manifest abuse of discretion." ***Commonwealth v. Zirkle***, 107

A.3d 127, 132 (Pa. Super. 2015)(citation omitted). An abuse of discretion is established only if the court "ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision." ***Id***.

When imposing a sentence, the sentencing court must consider the protection of the public, the gravity of the offense as it relates to the impact on the victim and on the community, and the rehabilitative needs of the defendant. ***Commonwealth v. Conte***, 2018 PA Super 299, 2018 WL 5666923, *5 (November 1, 2018)(citation omitted); 42 Pa. C.S. § 9721 (b). "A court is required to consider the particular circumstances of the offense and the character of the defendant." ***Edwards, id.,*** (quoting ***Commonwealth v. Griffin,*** 804 A.2d 1, 10 (Pa. Super. 2002)). "In particular, the sentencing court should refer to the defendant's prior criminal record, his age, personal characteristics and his potential for rehabilitation." ***Id.***

In this particular case, the court considered all of the relevant factors and did not abuse its discretion. The sentence was within the standard guidelines. The court imposed a concurrent sentence with respect to Count 4 and no incarceration with respect to Count 7. For sentencing purposes, the court merged the harassment counts with the simple assault counts. The defendant ended up with a two (2) to five (5) year sentence when a standard range sentence could have resulted in a four and a half (4 ½) to ten (10) year sentence. A claim that it was excessive has no merit whatsoever.

Moreover, it was not improper for the court to consider Defendant's history. That history included certain "breaks" which the court had given to the defendant with the

hope that defendant would have used the breaks as an opportunity to become a law abiding citizen instead of continuing his criminal behaviors.

The defendant had a probation violation in July of 2016 for, among other things, testing positive for THC, amphetamine and methamphetamine. He was sanctioned to thirty (30) days in jail and as a condition of continuing supervision was ordered to attend Lycoming County's Reentry Services program. He was doing very well in the program and asked that the program be removed as a condition of supervision due to him working long hours at his job and not having transportation to Williamsport. The court allowed the defendant to be released from the program.

In October of 2017, the defendant was set to max off of his probation but still owed 75 hours of court-ordered community service and was delinquent $200.00 on his costs and fines. He was given another "break" by the court which permitted him to be released from supervision and reset his fines as well as a reasonable payment schedule. The court waived Defendant's community service.

He was released from supervision on October 12, 2017. This incident, however, happened only ten days later on October 22, 2017.

Once these charges were filed, Defendant was incarcerated in lieu of bail. On May 30, 2018, however, the court determined that the defendant was eligible for nominal bail pursuant to Rule 600 (E). The court directed that the defendant not consume any alcohol or controlled substances and comply with the conditions of supervised bail.

Only a few months later, however, the defendant's bail was revoked. He was

involuntarily removed from the American Rescue Workers, he did not obtain an assessment as directed, he smoked marijuana on at least two occasions and drank alcohol on one occasion. As the court noted in its July 18, 2018 order revoking bail, "the defendant was given the opportunity to be released but chose to continue using and chose not to address his substance abuse issues."

Finally, and as noted by the court during the sentencing, the sentence in the court's opinion, was necessary to protect the public, reflect the seriousness of the offenses to extent that they impacted the victims and to address Defendant's rehabilitative needs. The defendant had prior contacts that were somewhat similar in nature including possession with intent to deliver, possession of drug paraphernalia and defiant trespass. The escalating sanctions that were imposed in the past failed to either motivate or cause the defendant to change his behaviors. He had been on probation, had been jailed in a county facility and placed on supervised bail. The defendant continued with behaviors attributable to substance abuse and anger management problems which he previously failed to address. Finally, the evidence based risk needs assessment provided in the Pre-Sentence Investigation report noted that the defendant was at a high risk for recidivism.

While Defendant admitted in the Pre-Sentence Investigative report to "being in the wrong", the court considered him to be a significant danger. He could not control himself or address his issues. He threatened to kill the mother of his child and physically menaced said mother and the grandmother of his child in the presence of his child because his child "was supposed to be at a birthday party and never showed until later in the

evening." Defendant admitted that he "was intoxicated and acted out of anger."

Defendant's sentence was palpably reasonable and clearly within the court's discretion. While the court concedes that any state prison sentence may be unpleasant, it is meant to be. This sentence in the aggregate was far from being unduly harsh or unquestionably unreasonable. Cf., ***Commonwealth v. Sarvey***, 2018 PA Super 307 (Nov. 16, 2018). The choice for Defendant to go to state prison was made by him and not the court. The sentence was individualized, rational, and guided by sound judgment. It was proportional to Defendant's conduct.

ORDER

AND NOW, this ___ day of November 2018, following a hearing and argument, Defendant's motion for reconsideration of sentence is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire, ADA
Nicole Spring, Esquire, APD
Gary Weber, Lycoming Reporter
Work File